

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Revision of Part 22 of the)
Commission's Rules Governing)
the Public Mobile Services)

CC Docket No. 92-115

Amendment of Part 22 of the)
Commission's Rules to Delete)
Section 22.119 and Permit the)
Concurrent Use of Transmitters)
in Common Carrier and Non-)
Common Carrier Service)

CC Docket No. 94-46
RM 8367

Amendment of Part 22 of the)
Commission's Rules Pertaining)
to Power Limits for Paging)
Stations Operating in the 931)
MHz Band in the Public Land)
Mobile Service)

CC Docket No. 93-116

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PARTIAL OPPOSITION OF PRONET INC.
TO PETITION FOR RECONSIDERATION

ProNet Inc. ("ProNet"), by its attorneys and in accordance with the Commission's Rules, hereby opposes, in part, the Petition for Reconsideration in the above-captioned rulemaking proceeding filed by Paging Network, Inc.^{1/} Specifically, ProNet opposes an aspect of the 931 MHz application processing scheme proposed by PageNet in its Petition at pages 2 - 9. Therein, PageNet defines the universe of pending 931 MHz applications as:

- o those filed before January 1, 1995 in geographic areas for which available 931 MHz channels exceed the number of applicants and which involve no petitions or protests;

^{1/} The subject Petition for Reconsideration is hereinafter referred to as the "PageNet Petition."

- o those that were placed on Public Notice prior to October 26, 1994 and are either mutually exclusive or subject to petitions or protests (i.e., "MX Group 1") ; and
- o those that were placed on Public Notice subsequent to October 26, 1994 but before January 1, 1995, and are either mutually exclusive or subject to petitions or protests (i.e., "MX Group 2")

With respect to the first group of applications above, PageNet urges the Commission to forgo reopening of filing windows or submission of application amendments.^{2/} Rather, the Commission should simply grant these applications as quickly as possible under pre-1995 processing procedures. Where these applications requested a preferred channel, the Commission should strive to grant that channel; where the preferred channel is unavailable (or where the applicant expressed no preference), the Commission should assign a channel and grant the application.

ProNet is not opposed to these recommendations for the first group of applications defined by PageNet.

For the third group of applications (i.e., MX Group 2), PageNet proposes that the Commission issue a detailed public notice describing all the particulars of each application; thereafter, each applicant would have fifteen days to specify or amend its channel preference. (Applicants who originally indicated no preference and failed to amend during the fifteen day period would be dismissed.)

If the amendment process recommended by PageNet for MX Group 2 eliminates mutual exclusivity among certain applications, then

^{2/} PageNet Petition at 4.

those applications can be granted. Where mutual exclusivity is not cured by amendments, the applications will be grouped and designated for auctions or comparative hearings, where a modification application (as defined under the new rules) is part of the group.

ProNet is not opposed to these recommendations for the third group of applications defined by PageNet.

For the second group of applications defined by PageNet (i.e., MX Group 2, applications accepted for filing prior to October 26, 1994), PageNet proposes the same processing scheme discussed above with respect to MX Group 1.^{3/} For a subset of applications within MX Group 2-- namely, those 931 MHz applications that were previously granted by the Commission and are subject to pending petitions for reconsideration or applications for review-- ProNet is opposed to PageNet's proposed processing scheme.

As stated in ProNet's own Petition for Reconsideration in this proceeding,^{4/} the instant Report and Order ("R&O"), accepting comments of ProNet and others, declined to retroactively impose the new processing scheme adopted therein on all previously granted 931 MHz applications presently subject to outstanding petitions for reconsideration and applications for review.^{5/} Rather, the R&O

^{3/} Compare PageNet Petition at 6-7 with id. at 7-9.

^{4/} ProNet's Petition for Reconsideration in the above-captioned rulemaking proceeding is hereinafter referred to as the "ProNet Petition."

^{5/} In its Comments in response to the Further Notice of Proposed Rulemaking in this proceeding (filed June 20, 1994), ProNet
(continued...)

held that these cases should be decided under existing rules, and directed the Common Carrier Bureau to resolve or prepare for Commission resolution all such disputes before the new rules became effective on January 1, 1995-- an aspect of the R&Q that ProNet strongly supported and continues to support.^{6/}

The R&Q's mandate to resolve outstanding petitions for reconsideration and applications for review was, however, substantially undermined by the following exception:

Because of the ambiguous and confusing nature of our existing rules and related practice and precedent, however, it may not be possible to resolve some of these cases under the existing rules. In such cases, we see no alternative but to return the applications, even if initially granted, to pending status on the grounds that granting, denying, or dismissing applications pursuant to such ambiguous and confusing rules could only lead to reversal, regardless of what action we take.^{7/}

ProNet's Petition implored the Commission to reverse this unbounded caveat and to pledge that all outstanding pleadings would be resolved in accordance with 931 MHz licensing procedures as

^{5/}(...continued)
contended (at 5) that:

[T]he new 931 MHz processing procedures recommended by the FNPRM should be scrapped, especially as applied to incumbent licensees subject to petitions for reconsideration or review. Agency resources should be focused instead on swiftly resolving these petitions in accordance with 931 MHz licensing procedures as initially established, applied and interpreted by the Commission.

^{6/} See R&Q, ¶¶ 98-99. Because no decisions involving outstanding petitions for reconsideration and applications for review were rendered prior to the January 1, 1995 effective date of the new Part 22 Rules, the Commission stayed the new processing rules for all 931 MHz paging applications. Order in CC Docket No. 92-115, FCC 94-357, released January 10, 1995.

^{7/} R&Q, ¶ 98 (emphasis added).

initially established, applied and interpreted by the Commission.^{2/}

PageNet's proposal for MX Group 2 is irreconcilable with ProNet's position that outstanding challenges to prior grants of 931 MHz applications should be decided in accordance with the Commission's statutory obligations. Because PageNet's proposal will allow the Commission to avoid its duty to rule on petitions for reconsideration and applications for review, the proposal should be rejected with respect to those 931 MHz applications that were previously granted yet remain subject to petitions for reconsideration and applications for review that are still pending before the Commission.

Respectfully submitted,

PRONET INC.

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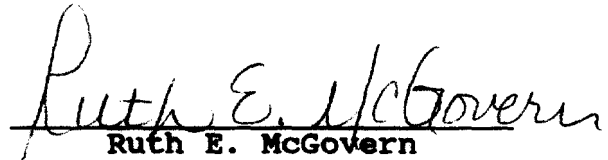
Dated: January 20, 1995

^{2/} See ProNet Petition at 7 - 9.

CERTIFICATE OF SERVICE

I, Ruth E. McGovern, a secretary with the law firm of Gurman, Kurtis, Blask & Freedman, Chartered, do hereby certify that I have on this 20th day of January, 1995, had a copy of the foregoing "PARTIAL OPPOSITION OF PRONET INC. TO PETITION FOR RECONSIDERATION" sent by U.S. first-class mail, postage prepaid, to the following:

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Ruth E. McGovern